IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9354 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JANTA COMMERCIAL COOP. BANK LIMITED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9354 of 2000

MR RAVINDRA SHAH for Petitioner No. 1-10

MR PR ABICHANDANI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/08/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the show cause notice dated 15.7.2000 (Annexure "F") issued by the Registrar of Co-operative Societies under the Section 81 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act" or "the Gujarat Act") calling upon the petitioner-society to show cause why the

managing committee of the petitioner-society should not be superseded and the administrator should not be appointed. The petitioner-society filed its reply dated 8.8.2000 (Annexure "G") to the show cause notice.

2. The main contention raised in the petition is that the Registrar has no power or authority to issue any notice, even a show cause notice for the supersession of the managing committee of the petitioner-Bank without the sanction of the Reserve Bank of India (hereinafter referred to as `the Reserve Bank'). It is contended that since the petitioner is admittedly an insured co-operative bank governed by the provisions of Section 115A of the Act, in view of the fact that Section 115 A starts with a non-obstante clause and sub-section (3) thereof provides that the powers of supersession of the committee and the appointment of an administrator in place of the committee is to be exercised, if so required, by the Reserve Bank, initiation of proceedings by the Registrar without the sanction or requisition of Reserve Bank is without jurisdiction. It is also contended that several petitions raising this question have been admitted by this Court and interim relief has also been granted in all such petitions.

3. The present petition came to be filed on 1.9.2000. By order dated 4.9.2000, this Court issued Rule and granted ad-interim relief directing the Registrar, Co-operative Societies not to take any further action on the impugned show cause notice dated 15.7.2000. That ad-interim relief has continued from time to time.

4. In response to Rule, affidavit in reply dated 30.11.2000 has been filed by the Joint Registrar (Audit), Co-operative Societies, Gujarat State contending that proceedings under Section 81 of the Act can be resorted to without obtaining any sanction of the Reserve Bank of India. What Section 115A of the Act provides is that if the Reserve Bank requires the Registrar to take action against an insured co-operative bank, the Registrar has to take action, but that provision does not take away the power and authority of the Registrar under Section 81 of the Act to take appropriate action if the facts and circumstances of the case so demand. Without prejudice to the said contention, it is also pointed out that out of abundant caution, as per letter dated 1.9.2000, the Registrar had submitted a proposal to the Reserve Bank to the effect that the Registrar proposes to supersede the Board of Directors of the petitioner-Bank and in reply the Reserve Bank of India sent letter dated 13.11.2000 stating that the Reserve Bank has no objection to the

Registrar's proposal to supersede the Board of Directors of the petitioner-Bank.

In view of the aforesaid factual aspect, it is obvious that the very basis of the petition is knocked out.

5. The learned counsel for the petitioner has, however, raised the following further contentions :-

5.1 The Reserve Bank has merely conveyed its no objection to the proposal of the Registrar, but the Reserve Bank has not required the Registrar to supersede the Board of Directors of the petitioner-Bank or to appoint an administrator.

5.2 The interpretation placed by the respondents on Section 115A is not correct, because when Section 81 of the Act was on the statute book ever since the enactment of the Act in 1961, there was no need for insertion of Section 115A in the year 1978 by Gujarat Act No. 8 of 1978 and that too by the commencement of Section 115A with the words "Notwithstanding anything contained in this Act".

5.3 The learned counsel has placed strong reliance on the decision of the Punjab & Haryana High Court in Surinder Singh vs. Registrar, Cooperative Societies, Chandigarh, 1997 AIHC 2106 in support of his contention that the State Government or the Registrar has no jurisdiction to initiate any proceedings for supersession of the Board of Directors of an insured cooperative Bank without the prior sanction or requisition of the Reserve Bank.

5.4 Reliance is also placed on the judgment dated 27.1.1993 of a Division bench in Letters Patent Appeal No. 492 of 1992 for contending that that the Division bench has granted interim relief in a pending petition raising the same contention raised in this petition.

6. It is required to be noted at the outset that when it was pointed out to the learned counsel for the petitioner that the petition was directed against a show cause notice and, therefore, the petition was premature, the learned counsel had submitted that since the show cause notice was issued without jurisdiction, the petitioner was keen to press the petition on merits and to obtain a verdict of the Court on the legality or otherwise of the show cause notice. The Court, therefore, proceeds to adjudicate upon the legality of

the impugned notice.

7. Before dealing with the above contentions, it is necessary to set out the relevant portions of Sections 81 and 115A of the Act.

"81. Supersession of Committee.- (1) If in respect of a committee of a Society having the Registrar as its member, the State Government and in respect of a Committee of a Society which does not have the Registrar as its member, the Registrar, is of the opinion that the Committee -

(a) persistently makes default or, is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or does anything which is prejudicial to the interest of the society or its members, or

(b) ... ...

then subject to the rules the State Government or, as the case may be the Registrar may, after giving the committee an opportunity of stating its objections, if any, within fifteen days from the date of issue of notice, by order in writing, remove the Committee and appoint -

(i) a committee, consisting of one or more members of the society, in its place, or

(ii) one or more administrators who need not be members of the society

to manage the affairs of the society for a period not exceeding two years as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so, however, that the total period does not exceed four years in the aggregate.

(2) to (5) ... ...

(6) Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult any co-operative financing institution to which it is indebted."

"115A. Order for winding up, reconstruction,

supersession of committee, etc. of insured co-operative bank not to be made without sanction or requisition of Reserve bank of India. Notwithstanding anything contained in this Act, in the case of an insured co-operative bank,-

(1) ... ...

(2) ... ...

(3) If so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for supersession of the committee and the appointment of an administrator in place thereof for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee of such bank."

(emphasis supplied)

8. There is no dispute about the fact that the petitioner-Bank is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961. In view of the fact that it is a co-operative society registered under the Act, it is subject to the jurisdiction of the Registrar/State Government in the matter of exercise of their powers under Sections 81, 86, 93 and various other provisions of the Act which have been enacted to ensure that the co-operative societies are run in accordance with the provisions of the Act and Rules and they subserve the co-operative movement. There is nothing in Section 115A or 81 which makes the provisions of Section 81 inapplicable to insured co-operative banks.

9. The contention of the learned counsel for the petitioner that in view of the non-obstante clause, Section 115A supersedes or overrides Section 81 of the Act, in so far as the insured co-operative banks are concerned, cannot be accepted. Section 115A does not provide that the managing committee/Board of Directors of

an insured co-operative bank cannot be superseded without prior sanction of the Reserve Bank, or that proceedings for supersession of such managing committee cannot be initiated without prior permission or requisition of the Reserve Bank. All that Section 115A lays down is that notwithstanding anything contained in the Gujarat Cooperative Societies Act, in the case of an insured co-operative bank, if the Reserve Bank is of the opinion that it is necessary to supersede the managing committee and appoint an administrator for an insured co-operative bank (for the reasons of public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank), the Registrar of Co-operative Societies is duty bound to accept and implement such opinion and the Registrar cannot be permitted to say that in the inquiry conducted by the State Government/Registrar under Section 81 or any other provisions of the Act, the insured cooperative bank in question was not found to have committed any acts of mismanagement or that as per the opinion of the State Government/Registrar, the insurance cooperative bank is run properly. Once the Reserve Bank requires the Registrar to supersede the Committee and appoint an administrator in place thereof on the ground/s aforesaid, the Registrar has no other alternative but to carry out those directions. The section does not place any veto on, or whittle down, the powers of the State Government/Registrar to initiate proceedings under Section 81 of the Act. Of course, once the State Government/Registrar initiates proceedings under Section 81 in respect of certain alleged irregularities/ illegalities and if those very alleged irregularities/illegalities have also been looked into by the Reserve Bank and the Reserve Bank has found no substance in those irregularities/illegalities for that particular relevant period, then that opinion of the Reserve Bank would certainly be required to be taken into consideration by the State Government/Registrar, but the State Government/Registrar cannot be pre-empted from initiating or holding inquiry against an insured co-operative bank under Section 81 of the Act merely on the ground that the Reserve Bank has not required the Registrar to take action under Section 115A of the Act.

10. However, the learned counsel for the petitioner has sought to fortify his arguments by heavily relying on the heading of Section 115A, and particularly the following words therein :-

"Order for supersession of Committee etc. of

insured co-operative bank not to be made without sanction or requisition of Reserve Bank of India."

Apart from the fact that the heading itself does not place any fetter on the power of the State Government/Registrar to initiate the proceedings for supersession of Committee etc., the settled legal position is that the heading prefixed to a Section cannot control the plain words of the provision. In M/s Frick India Ltd. vs. Union of India, AIR 1990 SC 689, Their Lordships of the Supreme Court have laid down the following rule interpretation :-

"It is well settled that the headings prefixed to sections ... . cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and umambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision."

As discussed in the preceding paragraph, the main part of Section 115A merely provides that when the Reserve Bank requires the Registrar to supersede the Committee of an insured co-operative Bank, the Registrar is bound to comply with such requisition. The Section itself does not require the Registrar to obtain any sanction or requisition of the Reserve Bank either for initiating or for completing the proceedings for supersession of the Committee or Board of Directors of an insured co-operative Bank.

11. In view of the above discussion, the contention of Mr Shah for the petitioner-bank that by the letter dated 13.11.2000, the Reserve Bank has not required the Registrar to supersede the Board of Directors of the petitioner-Bank does not carry the petitioner's case any further. On the contrary, it can safely be said that initiation of proceedings against the petitioner under Section 81 of the Act is vindicated by the opinion of the Reserve Bank through its letter dated 13.11.2000.

12. As regards the contention urged by the learned counsel for the petitioner that when Section 81 of the

Act was on the statute book ever since the enactment of the Act in 1961, there was no need for insertion of Section 115A in the year 1978 by Gujarat Act No. 8 of 1978 and that too by the commencement of Section with the words "Notwithstanding anything contained in this Act", the same also suffers from the same misconception. The argument proceeds on the assumption that Section 115A was intended to whittle down the powers of the State Government/Registrar under Section 81 of the Act. There is nothing in the provisions of Section 115A of the Act which could justify any such inference being drawn. On the contrary, the words in the Section clearly indicate that when the Reserve Bank of India requires the Registrar to supersede the managing committee/Board of Directors of the insured cooperative bank and appoint an administrator in place thereof, the Registrar is bound to act accordingly for such period, not exceeding five years, as the Reserve Bank may specify from time to time. That obligation cannot and does not take away the power of the State Government/Registrar under Section 81 of the Act to initiate on their own proceedings against an insured cooperative bank under Section 81 of the Act and to pass appropriate orders after considering the reply of the insured co-operative bank and the relevant material.

13. A Division Bench of the Punjab & Haryana High Court has taken the view in Surinder Singh vs. Registrar, Cooperative Societies, Chandigarh, 1997 All India High Court Cases 2106 that Section 94 of the Haryana Co-operative Societies Act (hereinafter referred to as "the Haryana Act") (which Section is in pari materia with the provisions of Section 115A of the Gujarat Act) is a special provision required to be followed in the case of insured cooperative societies and that it starts with non obstante clause "Notwithstanding anything contained in this Act" thereby, ruling out the applicability of any other provision of the Act, including Section 34 of the Haryana Act (analogous to Section 81 of the Gujarat Act).

14. While this Court agrees that Section 115A of the Gujarat Act has an overriding effect in so far as the direction given by the Reserve Bank to the Registrar to supersede the Board of Directors/managing committee of an insured co-operative bank cannot be ignored by the Registrar on the ground that in the inquiry under Section 81 of the Gujarat Act (Section 34 of the Haryana Act), the State Government/Registrar did not consider it fit to supersede the managing committee/Board of Directors of the insured cooperative bank, at the same time, this Court does not agree with the view taken by the Punjab &

Haryana High Court that Section 94 of the Haryana Act (Section 115A of the Gujarat Act) is to the exclusion of Section 34 of the Haryana Act (Section 81 of the Gujarat Act). As already discussed above, the insured cooperative banks which are also cooperative societies registered under the Act do not go out of the the purview of Section 81 of the Gujarat Act (Section 34 of the Haryana Act) merely because they also fall under Section 115A of the Gujarat Act (Section 94 of the Haryana Act). The non-obstante clause is only to ensure that directions of the Reserve Bank are complied with as and when the Reserve Bank requires the Registrar to supersede the managing committee/Board of Directors of an insured cooperative bank, if the Reserve Bank considers that such a measure is necessary in public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank. Obligation to comply with the directions (opinion) of the Reserve Bank does not, and is not intended to, take away the preexisting power of the State Government/Registrar to supersede the managing committee/Board of Directors of an insured co-operative Bank to remedy the same or similar situation.

15. As regards the judgement dated 27.1.1993 of the Division Bench of this Court in Letters Patent Appeal No. 492 of 1992, the same was merely on the question of interim relief. The Court did not decide the question of the interpretation and scope of Sections 115-A and 81 of the Act on merits, but merely continued the ad-interim relief which was earlier granted by the learned Single Judge but which was vacated while admitting the petition even though the learned Single Judge found prima facie case in the petitioner's contention about lack of authority to issue notice under Section 81 of the Act.

Since this Court has finally decided this issue and this Court entertains no doubt about the correct interpretation of Sections 81 and 115-A of the Act, the judgement of the Division Bench on the question of interim relief has no bearing on the merits of the controversy involved in this petition.

16. The learned counsel for the petitioner, however, submits that in any view of the matter, this Court's intervention is warranted, because the Reserve Bank did not give any opportunity of being heard to the petitioners before forming the opinion as conveyed in the letter dated 13.11.2000.

Since the impugned show cause notice has been issued under Section 81 of the Act with the specific purpose of giving the petitioner an opportunity of being heard, absence of any hearing before the Reserve Bank does not and cannot vitiate the show cause notice issued by the Registrar under Section 81 of the Act. Since it is the Registrar who is going to pass the final orders, hearing before the Registrar under Section 81 of the Act would be sufficient compliance with the principles of natural justice.

17. In view of the above discussion, the Court finds that the impugned notice under Section 81 of the Act does not suffer from any jurisdictional error and holds that the same was not vitiated (even on the date of issuance of the notice) for want of any sanction/requisition of the Reserve Bank of India under Section 115A(3) of the Act.

18. The petition is accordingly dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

19. At this stage, Mr Ravindra R Shah, learned counsel for the petitioners prays for extension of the ad-interim relief granted earlier.

Apart from the fact that the Court has found no merits in the contentions raised, what is challenged in this petition is merely a show cause notice and the petitioners are afforded an opportunity of being heard. Hence, there is no warrant for continuance of the ex-parte ad-interim relief which was granted earlier.

(M.S. Shah, J.)
sundar/-